

REMARKS/ARGUMENTS

The Office Action mailed September 18, 2008, has been received and reviewed. Claims 28-47 are currently pending in the application. Claims 37-47 have been withdrawn by the Examiner as being drawn to an independent invention. Claims 28-36 stand rejected. Applicants have amended claim 28, cancelled claims 32 and 33, and respectfully request reconsideration of the application as amended herein.

Restriction Requirement

Applicants herein acknowledge the restriction requirement in the above-referenced application. Claims 28-47 are currently pending in the application. The Office has identified the following groups of claims as being drawn to separate inventions:

Invention I – Claims 28-36, originally presented invention drawn to a semiconductor device, classified in class 257, subclass 300; and

Invention II – Claims 37-47, newly submitted invention drawn to a method of making a semiconductor device, classified in class 438, subclass 243.

The Examiner has elected the claims of Invention I, claims 28-36, without traverse.

Specification

The disclosure is objected to for the stated reason that the title of the invention is not descriptive. The Examiner requires a new title that is clearly indicative of the invention to which the claims are directed. Appropriate correction has been made.

35 U.S.C. § 102(b) Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 5,338,700 to Dennison et al.

Claims 28, 31, and 34 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Dennison et al. (U.S. Patent No. 5,338,700). Applicants respectfully traverse this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Dennison et al. discloses a method of forming a bit line over a capacitor array of memory cells. The method includes providing an array of substantially electrically isolated word lines atop a semiconductor wafer and providing active areas about the word lines to define an array of memory cell FETs. The method further includes providing capacitors within capacitor contact openings and providing an overlying layer of insulating material over a covering layer of insulating material formed over the capacitors. Additionally, the method includes providing bit line contact openings through the overlying layer and the covering layer and providing a digit line layer of conductive material atop the wafer and within the bit line contact openings.

Amended independent claim 28 recites, in part, “a first digit line formed substantially above the at least one container-configured capacitor, wherein each of the plurality of memory cells couples to the first digit line; and a second digit line formed substantially above the first digit line, wherein the second digit line and the first digit line are separated by an insulated dielectric material.”

The 35 U.S.C. § 102(b) rejection of claim 28 is improper because Dennison et al. does not describe each and every element of claim 28. More specifically, it is respectfully asserted that Dennison et al. lacks any description of a *second digit line* formed substantially above a first digit line. Rather, Dennison et al. describes providing a single digit line layer of conductive material atop the wafer and within the bit line contact openings. Applicants note that it appears that the Examiner agrees with this assertion. *See* page 7 of the outstanding Office Action, dated September 18, 2008. Therefore, Dennison et al. does not describe each and every element of claim 28.

Accordingly, it is respectfully asserted that claim 28 is anticipated by Dennison et al. and, therefore, claim 1 allowable.

Claims 31 and 34 are each allowable, among other reasons, for depending directly from claim 28, which is allowable.

Furthermore, on page 7 of the outstanding Office Action, the Examiner has asserted that Chin et al. discloses “a device, comprising a dielectric layer (21) formed substantially above the digit line (20), and a second digit line (22), where the second digit line and the digit line are separated by an insulated dielectric material (see FIG. 3).” Applicants respectfully disagree and assert that element “22” is unreferenced in the description of Chin et al. and, therefore, Chin et al. lacks any description that unreferenced element “22” comprises a digit line. Furthermore, Chin et al. lacks any description that metal 52 comprises a digit line.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 5,338,700 to Dennison et al.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dennison et al. (U.S. Patent No. 5,338,700). Applicants respectfully traverse this rejection, as hereinafter set forth.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) **must teach or suggest all the claim limitations**. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, the Examiner must determine whether there is “an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-1741, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Further, rejections on obviousness grounds “cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id* at 1741, quoting *In re Kahn*, 441, F.3d 977, 988 (Fed. Cir. 2006). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicant’s disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

Claim 29 is allowable, among other reasons, for depending directly from claim 28, which is allowable.

Obviousness Rejection Based on U.S. Patent No. 5,338,700 to Dennison et al. in View of U.S. Patent No. 5,838,038 to Takashima et al.

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Dennison et al. (U.S. Patent No. 5,338,700) in view of Takashima et al. (U.S. Patent No. 5,838,038). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 30 is allowable, among other reasons, for depending directly from claim 28, which is allowable.

Obviousness Rejection Based on U.S. Patent No. 5,338,700 to Dennison et al. in View of U.S. Patent No. 5,378,908 to Chin et al.

Claims 32 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dennison et al. (U.S. Patent No. 5,338,700) in view of Chin et al. (U.S. Patent No. 5,378,908). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 32 and 33 have each been cancelled.

Obviousness Rejection Based on U.S. Patent No. 5,338,700 to Dennison et al. in View of U.S. Patent No. 5,378,908 to Chin et al. and U.S. Patent No. 5,610,418 to Eimori

Claims 35 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dennison et al. (U.S. Patent No. 5,338,700) in view of Chin et al. (U.S. Patent No. 5,378,908) and Eimori (U.S. Patent No. 5,610,418). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 35 and 36 are each allowable, among other reasons, for depending from claim 28, which is allowable.

ENTRY OF AMENDMENTS

The amendments to claim 28 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application.

CONCLUSION

Claims 28-31 and 34-36 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



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